



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS

JUSTICE SYSTEM INTEGRITY DIVISION

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June 23, 2005

Captain Raymond Peavy
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Dear Captain Peavy:

RE: J.S.I.D. File No. 04-0137
L.A.S.D. File No. 004-02480-2813-145

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 12, 2004 non-fatal shooting of David Zamudio by Los Angeles County Sheriff's Deputies Anthony Forlano and Joseph Iberri. We conclude that the deputies acted in lawful self-defense and defense of others.

The following analysis is based on reports and photographs prepared and submitted to this office on April 30, 2004 by Sergeant Martin Rodriguez of the Homicide Bureau of the Los Angeles County Sheriff's Department. The District Attorney Response Team, comprised of Deputy District Attorney Kraig St. Pierre and Senior Investigator Eric Cheung, responded to the scene. They were briefed on the circumstances of the shooting and given a walk-through of the scene. Deputy Forlano gave two voluntary statements to investigators. Additionally, the shooting was partially captured on a privately owned security camera. Deputy Forlano's statements and the videotape of the shooting were both reviewed as part of this analysis.

FACTUAL ANALYSIS

On Thursday, February 12, 2004, at approximately 9:20 p.m., Los Angeles County Sheriff's (LASD) Deputies Joseph Iberri and Anthony Forlano were on routine patrol in a marked police car when their attention was drawn to a black Honda Accord sedan, with two occupants, driving erratically in the area of Willowbrook and Cedar Avenues in the City of Compton. Thinking the driver may be intoxicated the deputies attempted to stop the Honda. On Willowbrook Avenue just south of Rosecrans Boulevard the Honda initially pulled to the side of the road. Deputy Forlano, the passenger, began to exit the

patrol car to approach the Honda but, before he could, it sped away and a brief pursuit ensued.

Running the red light at Rosecrans Boulevard the Honda sped down Willowbrook Avenue until, after a quarter of a mile, it made a hard left into the parking lot of Duron's Market and crashed into a blue sedan that was parked facing northbound in the lot. The driver, a male, immediately bolted from the car, ran northward toward an approximately six-foot high fence, scrambled over and ran out of view. He remained at large. As he fled from the car Deputy Forlano saw what he believed was a medium-sized chrome handgun in the driver's hand. This was confirmed when Deputy Iberri, who chased the driver, began to shout, "Gun! Gun! Gun!" At nearly the same moment the passenger, juvenile David Zamudio, ran from the front passenger door and headed in a southwesterly direction which, Deputy Forlano thought, would place him in a position of advantage from which he, if similarly armed, could possibly harm the deputies. Deputy Forlano believed Zamudio was also armed because, as he exited the Honda, he saw Zamudio place a large silver object in the front pocket of his pants. Deputy Forlano followed Zamudio who ran, in an arcing pattern, toward the southern edge of the parking lot. As he ran Deputy Forlano saw that Zamudio was holding his left hand near his front waistband. Zamudio repeatedly turned and looked toward Deputy Forlano as he ran.

According to Deputy Forlano, when David Zamudio reached the southern corner of the parking lot, at the curb/sidewalk area of Willowbrook Avenue, he came to an almost complete stop and turned to his left. Deputy Forlano saw Zamudio's right arm begin to rise although, because his view was obscured by the rest of Zamudio's body, he could not see the right hand. At that instant Deputy Forlano, thinking Zamudio might turn and fire at him with a gun, feared for his life. According to his statement, Deputy Forlano immediately crouched slightly, moved to his left, and fired three rounds from his department-issued nine-millimeter Beretta semiautomatic handgun. Zamudio was struck by gunfire and dropped to the pavement. Deputy Forlano immediately broadcast that he had been involved in a shooting and called for paramedics. When additional Sheriff's units arrived Zamudio was searched and found to be unarmed.

According to his statement, Deputy Joseph Iberri initially ran after the driver but, once he got away, decided to assist Deputy Forlano with the apprehension of the passenger. As he made his way back across the lot he passed between his patrol car and the suspect vehicle when, to his surprise, the rear passenger door of the suspect's car opened and a heavyset Hispanic male emerged. Startled, Deputy Iberri attempted to alert his partner of the third occupant while, at the same time, ordering the man to the ground – an order with which the man immediately complied. Deputy Iberri then took a position from which he could both guard the occupant and monitor Deputy Forlano further south in the lot.

Suddenly, Deputy Iberri heard three shots coming from the south. He immediately looked up and saw David Zamudio, his hands cupped at his waistline, facing his partner who was crouching and moving to his left. Thinking that Zamudio had just shot at Deputy Forlano,

or was in the process of doing so, Deputy Iberri fired one round from his department-issued nine millimeter Beretta semiautomatic handgun. Zamudio immediately dropped to the sidewalk. The two deputies then stood guard over their respective suspects and waited for help to arrive.

David Zamudio was transported by ambulance to Martin Luther King Jr./Drew Medical Center where he was treated for a single gunshot wound to the right buttock. The bullet was not removed so a forensic analysis could not be performed to determine which deputy's gun was its source. Zamudio, seventeen years old at the time of the shooting, waived his *Miranda* rights and agreed to be interviewed by investigators.

David Zamudio told investigators that he was picked up by the rear seat passenger, Alfredo Bueno, and the driver who he had only seen twice before, possibly known by the moniker "Droopy," some time between 8 and 9 p.m. Zamudio said that, although he did not see "Droopy" with a gun, he did try to sell Zamudio a silver cellular telephone while they were in the car. Zamudio did not purchase the phone because he had his own cellular telephone already in his right, front pants pocket. "Droopy" also tried to sell Zamudio a silver electric shaving razor which, although he did not buy it, Zamudio held in the same pocket.

When the pursuit ended, Zamudio ran from the passenger side of the car because he was on probation and did not want to get caught by the police. He recalled hearing the deputy order him to stop as he ran but, because he was afraid, he refused to yield. The weight of the razor and cellular telephone, already in his pocket before he exited the car, caused his pants to sag forcing him to hold them up as he ran. Finally, Zamudio recalled turning back and looking at Alfredo Bueno, known to him as "Donut", and seeing him on the ground. It was at this point, according to Zamudio, that he was shot and fell to the pavement.

Daniel Cruz, 26, was the owner of the blue Buick against which the stolen Honda came to rest after it entered the parking lot. Mr. Cruz was at the market to obtain drinking water from a vending machine near the north door of the market and can briefly be seen, wearing a light-colored cowboy hat, in the videotape of the event. During his interview with Sheriff's investigators, a synopsis of which has been provided, Cruz recalled seeing David Zamudio flee from the Honda with Deputy Forlano in pursuit and yelling for Zamudio to stop. He next saw Zamudio suddenly stop running and turn and face Deputy Forlano. Cruz next heard the sound of a shot ring out and, immediately thereafter, Zamudio appeared to turn and run from Deputy Forlano. Cruz could not tell whether Zamudio held anything in his hands because his view of the event was obscured by the overhead security lights in the parking lots and the headlights from both the suspect vehicle and the patrol car pointing in his direction. It was his opinion that Deputy Forlano fired in self-defense.

The rear passenger of the stolen Honda, Alfredo Bueno, was also interviewed about his observations. Because the entire shooting occurred in a matter of seconds, and because he was in the rear seat of the Honda and, thereafter, being ordered to the ground at gunpoint, Bueno did not see all of the events leading up to the shooting. He did recall, however, seeing Zamudio make a quick turn to his left as he ran from Deputy Forlano. At the sound of the gunshots Bueno looked away and did not see anything further.

A search of David Zamudio's pants revealed a white, metal electrical razor, a blue plastic Nokia brand cellular telephone, and a silver Sprint brand flip-style cellular telephone.

As stated previously, the shooting of David Zamudio was partially recorded by a security camera set high on the front wall of Duron's Market. None of the actions of Deputy Iberri appear on the video. Most of the flight of David Zamudio and his shooting by Deputy Forlano can be seen. The shooting occurs at the outer reaches of the video and, therefore, appears quite grainy with both Deputy Forlano and David Zamudio appearing largely as silhouettes. No audio accompanies the video.

The relevant portion of the video begins with the black Honda, a stolen vehicle, heading northbound on Willowbrook Avenue with the Sheriff's patrol car immediately behind. Both cars go off the video at the point they enter the parking lot of Duron's Market and, after several seconds, David Zamudio reappears as he sprints away from the car and the deputies. Zamudio runs south on an arcing line which, at first, traces close to the front of Duron's Market and then swings due south toward the southern edge of the parking lot and Willowbrook Avenue. Zamudio is dressed in a loose-fitting white tee shirt, dark-colored pants, and white tennis shoes. He is running hard and, as he runs, appears to be holding something in his left hand at or near his front waistband while his right arm sways vigorously with the momentum of his body. The video is clear that his left hand is being held against his front waistband in a very obvious, and suspect, fashion.

As Zamudio arcs toward the south Deputy Forlano appears on the video and takes a more direct southerly route to cut off Zamudio's egress. Several times during the short pursuit Zamudio turns his head to the right toward Deputy Forlano. Finally, when Zamudio reaches the east sidewalk of Willowbrook Avenue he turns slightly left, due south, and continues to sprint away from the deputy. At this point, although no muzzle flash can be seen, Deputy Forlano fires his gun at Zamudio who immediately collapses to the sidewalk.

David Zamudio's criminal record consisted of two sustained juvenile petitions for joyriding and auto theft. He was on probation at the time of the shooting.

CONCLUSION

While it is rare to have a videotape of an officer-involved shooting, the videotape in this case has only limited evidentiary value for two reasons. First, the shooting takes place at the outer visual reach of the camera lens and, therefore, cannot be seen with clarity. At

best, the figures of Deputy Forlano and David Zamudio, on the edge of the lighted parking lot of the market, appear as darkened silhouettes. This is particularly true for David Zamudio whose actions are most significant to this analysis. Second, the videotape does not have an audio component which could help explain the exact sequence of events, such as the gun shots, leading up to the shooting.

Deputy Forlano told investigators that Zamudio turned to his left at which point he felt Zamudio was going to fire at him. This belief is reasonable for two reasons. First, David Zamudio does turn slightly left as he enters the east sidewalk of Willowbrook Avenue. This observation is corroborated by David Zamudio, Daniel Cruz, Alfredo Bueno and Deputy Iberri. Second, from the moment Zamudio first appears on the video he clearly has his left hand in, at or near his waistband. Because his back is to the video it is not clear exactly where his hand is or for what purpose he is holding it in front of his body. It is likely that, as he said in his statement, Zamudio was simply trying to keep his pants from falling down under the weight of the two phones and electric razor held in his pocket. Deputy Forlano, however, unaware of the reasons for Zamudio's behavior and believing Zamudio's comrade, "Droopy", was armed, was reasonable in assuming Zamudio was also armed even where he could not see a weapon given the position of Zamudio's left hand. Given the circumstances and the location, such is not an unreasonable assumption to make about a fleeing suspect. It is notable that, as he ran, the left side of Zamudio's body was canted away from Deputy Forlano such that it is not clear whether Zamudio's left hand was even visible to the deputy. Even if it were, however, the video makes clear that it remained in, at or near Zamudio's waistband – a common place for handguns to be stored on the person.

At the point David Zamudio turns on to the sidewalk area of Willowbrook Avenue his body appears as little more than a light-colored speck and his actions, whatever they were, cannot be accurately described. Multiple viewings of the videotape do not appear to show Zamudio stopping and turning as described by Deputy Forlano – a fact which is partially corroborated by the fact that Zamudio was shot in the buttocks – but, given that all four witnesses, including two civilians, describe seeing Zamudio slow, stop and turn, the possibility that it happened must be given credence.

Ultimately, the reasonableness of Deputy Forlano's actions are measured by those of a reasonable deputy standing in his shoes. Deputy Forlano was confronted by a seemingly armed gang member obviously intent on escaping capture. Deputy Forlano, who seconds earlier had actually seen an accomplice with a gun, was in pursuit of Zamudio, who gave every indication, by the way he was clutching his waistband with his left hand, that he was armed. It matters not that David Zamudio was unarmed, because the law only requires that Deputy Forlano's use of force be reasonable under the circumstances – not that he be right. *People v. Jackson* (1965) 233 Cal.App. 2d 639 As stated earlier, any reasonable deputy would have concluded that a fleeing suspect, at this time and location, clutching at his waistband as he sprints from a peace officer, is armed. Failure to draw this inference based on these facts would be unreasonable and, more importantly, a potentially deadly misjudgment. As such, Deputy Forlano's use of lethal force was both

lawful and reasonable under the circumstances. *People v. Williams* (1977) 75 Cal.App.3d 731

The videotape does not show any of Deputy Iberri's actions nor his perspective on the events as they unfolded. His claim that, after the shot was fired, Zamudio was facing Deputy Forlano with his hands cupped near his waist is not clear on the videotape. However, witnesses do claim that Zamudio turned toward Deputy Forlano in some fashion. The fact that Deputy Iberri, in an instant, was dealing with a surprise third suspect in Alfredo Bueno, was looking downrange several yards from his partner into an area where the well-lit parking lot gave way to ordinary street lighting, and that he was under the impression that his partner may be taking gunfire, makes his actions reasonable under the circumstances.

Because we conclude that the actions of Deputies Forlano and Iberri were both lawful and reasonable under the circumstances, we are closing our file and will take no further action in the matter.

Very truly yours,

STEVE COOLEY
District Attorney

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c: Deputy Anthony Forlano, #432017
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